

Working Paper 1

Analytical Framework

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WORKING PAPER 1:

ANALYTICAL FRAMEWORK

The aim of this document is to introduce the main concepts and the outlines of the analytical framework that will be used in the CITIZENS-LAW project. We will first discuss the distinction between the legal and the social foundations of the rule of law. Next, we will describe the main approach that will be used to analyse people's everyday perceptions of law: legal consciousness (and we will also discuss the sub-theme of legal alienation). Finally, we will discuss four mechanisms that are crucial for people's positive or negative perceptions of law: substantive justice, procedural justice, punitiveness and responsiveness. It should be stressed that this analytical framework is still a work in progress and will be developed further as the project develops. The way in which the analytical framework of the CITIZENS-LAW will be applied in empirical research in the Netherlands, Denmark and Hungary is discussed in a separate paper (Working Paper 2: Methods).

1. Introduction

The European Union (EU) is in a serious rule of law crisis (Breig et. al 2018). Recent policy reforms in Hungary (Szente 2017; Scheppele 2015) and Poland (Sadurski 2019; Konciewicz 2016) – that may affect judicial independence, the separation of powers, the freedom of expression and academic freedom – are considered to be a threat to European values (Article 2 TEU). Experts agree that the rule of law is 'part and parcel of the Union's DNA' and, as such, it provides 'the normative glue that holds the entire political and legal edifice together'. It is argued, therefore, that these and other examples of rule of law backsliding 'threaten not only the functioning of the EU's internal market but the very existence of the EU.' (Magen & Pech 2019, 244-5)

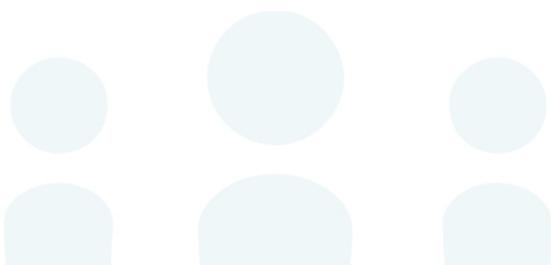
In 2014, this has led the European Commission to adopt a new 'Rule of Law Framework' to equip the Union with a more usable mechanism for encouraging Member State compliance with the EU values (European Commission 2014). This framework is based on Article 7 TEU, which provides for several legal sanctions (e.g., suspension of voting rights in the Council) against any EU country found guilty of a serious breach of Art 2 TEU. In 2017, this 'Article 7 procedure' was officially triggered against Poland and in 2018 against Hungary. However, the effects of these legal measures are limited. According to the European Parliament, they 'have not yet led these countries to realign with the EU's founding values.' (European Parliament 2020) Likewise, scholars argue that 'positive change is nowhere to be seen' and

the current situation is ‘evolving extremely fast and only in the direction of the deterioration of the rule of law’. (Kochenov & Bárd 2018, 5)

Against this background, EU Justice Commissioner Viviane Reding has argued that, in parallel to the economic and financial crisis, the EU is now also facing ‘a true “rule of law” crisis’. (Reding 2013) For the future of the EU, policymakers need to find a way to end this crisis. However, as numerous cases have demonstrated (Brooks 2003; Carothers 2006), the current approach that strongly emphasizes the legal foundations of the rule of law does not offer a fundamental solution. This approach prioritises legal procedures and institutional checklists (Krygier 2008). Yet, the essence of the rule of law not only resides in institutional arrangements, but ‘law is also a normative system that resides in the minds of the citizens of a society’. (Carothers 2006, 20) Therefore, for the law to rule, it has to count in society. Thus, we need also to consider the social foundations of the rule of law: people need to know the law, recognise the law as legitimate, and use the law (Blokker 2016).

There is a substantial body of literature available on the rule of law. However, previous research has mostly focused on the legal foundations of the rule of law (see, e.g., Verfassungsblog 2022). Some early studies suggest important differences between European countries in positive and negative perceptions of law (Gibson & Caldeira 1996). Yet contrary to the substantial body of research on the legal foundations, the social foundations of the rule of law are still largely a black box. This is reflected in at least three different ways. Firstly, most studies emphasize how government leaders and legal scholars feel about the current rule of law crisis, but empirical data on the views of the general public are limited. Secondly, there are virtually no conceptual and methodological tools to analyse the social foundations of the rule of law. Thirdly, current theories that explain positive and negative perceptions of law are still underdeveloped.

The research aim of CITIZENS-LAW is to develop a new approach that uses empirical research into EU citizens’ perceptions of law (in three countries) to develop a more effective governance toolkit to strengthen the rule of law in Europe.



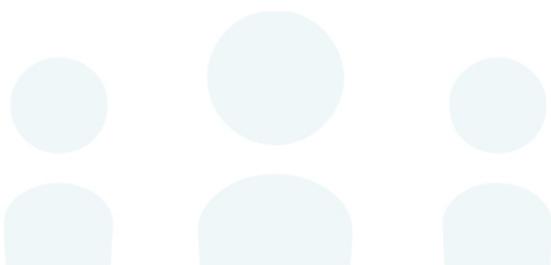
2. Research Questions

CITIZENS-LAW will investigate the following main research question:

How do citizens' everyday experience of law in the Netherlands, Denmark and Hungary shape the level of public support for the legal foundations of the rule of law; and how can we incorporate these findings into a new governance toolkit to strengthen the rule of law in Europe?

This research question will be divided into four sub-questions:

1. How do people in the Netherlands, Denmark and Hungary experience the law in their everyday life?
2. What are the underlying mechanisms that explain positive and negative perceptions of law?
3. How do the social foundations support or undermine the legal foundations of the rule of law?
4. How can we incorporate these findings into a new governance toolkit to strengthen the rule of law in Europe?



3. Legal and Social Foundations of the Rule of Law

Legal Foundations

There is a large body of literature on the rule of law (for a general account see: Loughlin 2010, 312–342). However, critics have argued that most of this work is characterized by a ‘purely formalistic and legalistic’ (Blokker 2016, 1), a ‘technical-instrumental’ (Blokker 2016, 5) or a ‘top-down’ (Fortin 2021, 29) view of the rule of the law. Krygier (2008) has termed this an ‘anatomical approach’ to the rule of law. These studies have two features in common;

‘First, their focus is on legal institutions and the norms and practices directly associated with them; second, a list of elements of such institutions and practices is presented as adding up to the rule of law.’ (Krygier 2008, 3)

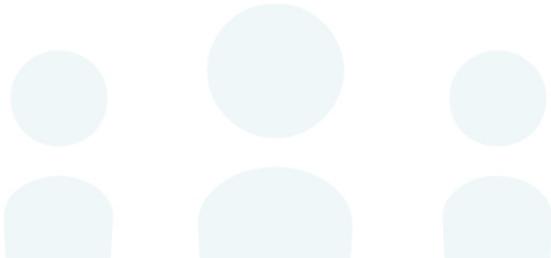
A similar approach is also dominant in EU policies that are related to the rule of law. In general terms, we see:

- *‘A focus on institutions – most broadly on State institutions, however, in terms of practice the focus is on the functioning of the justice system [...].’*
- *‘A focus largely determined by the legal profession [...].’*
- *‘A tendency to define the legal system’s problems and cures legalistically, in terms of courts, prosecutors, contracts, law reform, and other institutions and processes in which lawyers play central roles.’* (Nicolaidis & Kleinfeld 2012, 13)

This anatomical approach is also reflected in the ‘Rule of Law Checklist’ of the Venice Commission. The list is based on ‘the five core elements of the Rule of Law’: legal certainty, prevention of abuse/misuse of powers, equality before the law and non-discrimination and access to justice.

Social Foundations

Krygier and others have strongly criticized the anatomical approach to the rule of law. In their view, this approach only focuses on the legal foundations of the rule of law but it overlooks the fact that the success of legal rules and legal institutions ultimately depends on the social embeddedness of law and individuals’ relationship with the law. Nicolaidis & Kleinfeld (2012, 8) argue, for example, that the EU Rule of Law approach ‘fails to recognize that the “Rule of Law” is not about the law perse, but the will to respect it, which in turn is a social fact.’ In other words, ‘Law never means everything in people’s lives, and it rarely



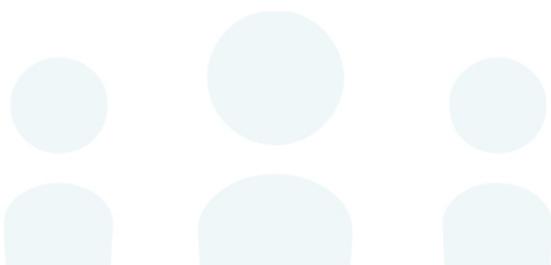
means nothing either. But to speak sensibly of the rule of law as a significant element in the life of a society, the law's norms must be socially normative.' (Krygier 2008, 19)

CITIZENS-LAW will not only look at the legal foundations, but also at the social foundations of the rule of law. In this project, the social foundations of the rule of law will refer to the 'place of law in a society'; 'the social reach and weight of the law' (Krygier 2008, 14)

As Krygier has argued, *'the only time the rule of law can occur, when then law might be said to rule, is when the law counts significantly, distinct and even in competition with other sources of influence, in the thoughts and behaviour [...] of significant sectors of a society.'* (Krygier 2008, 17) In other words,

- 'If people know nothing of the law, or knowing something think nothing of it, or think of it but don't take it seriously, or even, taking it seriously don't know what to do about it, then their lives will not be enriched by the rule of law.' (Krygier 2008, 19)

To analyze the social foundations of the rule of law, the project will focus on the 'normative economy' (Krygier 2008, 17) and the 'lived legal universe' (Fortin 2021, 40) – the so-called "nomos" as explained by Robert Cover in his seminal paper (1983, 4–11) – of individuals. More specifically, we will study 'the extent to which legal institutions, concepts, options, resources, frame, inform and support the choices of citizens.' (Krygier 2008, 18)



4. Main Approach: Legal Consciousness

In the legal literature, the rule of law is mostly studied using a top-down approach, which focuses on the actions and opinions of judges, lawyers, and policymakers. In contrast, this project will further develop a bottom-up approach and will focus on the everyday experience of citizens.

To study the social foundations of the rule of law, CITIZENS-LAW will draw on the literature on ‘legal consciousness’ to analyze citizens’ perceptions of law.

The perspective of legal consciousness is currently ‘one of the most prominent paradigms’ (Chua & Engel 2019, 336) in law and society research, which emerged in the 1980s and has since been adopted by growing numbers of researchers. Legal consciousness studies seek to understand ‘the way in which law is experienced and interpreted by specific individuals as they engage, avoid, or resist the law or legal meanings’ (Silbey 2001, 8626).

Scholars of legal consciousness use the analysis of, for example, the workplace (Hoffman 2003; Marshall 2003, 2005, 2006; Albiston 2006), economic markets (Larson 2004), juries (Fleury-Steiner 2003, 2004), social movements (Kostiner 2003, 2006; Kirkland 2008; Fritsvold 2009), public spaces (Nielsen 2000, 2004), the border (Abrego 2011; Kubal 2015) and the Internet (Lageson 2017) to study how law is acted upon and understood by ordinary citizens.

This project will define legal consciousness as people’s ‘orientation to the law’ (Nielsen 2000, 1087). Legal consciousness refers to ‘the ways in which people experience, understand, and act in relation to law’ (Chua & Engel 2019, 336).

Legal consciousness comprises ‘both the ideologies and the practices of people as they navigate their way through situations in which law could play a role’ (Chua & Engel 2019, 336). Chua & Engel (2019, 337) distinguish three ‘constitutive *elements* of legal consciousness’, which they refer to as: ‘worldview’, ‘perception’, and ‘decision’ (Chua & Engel 2019, 337; emphasis added). Worldview refers to ‘individuals’ understanding of their society, their place in it, their position relative to others, and, accordingly, the manner in which they should perform social interactions.’ (Chua & Engel 2019, 336) It influences ‘how they perceive and respond to new experiences – and whether they should mobilize the law.’ (Chua & Engel 2019, 337) Perception refers to individuals’ interpretation of specific events. ‘For individuals who perceive an event as unexceptional, law may seem immaterial; for those who perceive the same event as violative of interests or rights, law may seem significant.’ (Chua & Engel 2019, 337) Decision refers to individuals’ responses to events. ‘Decision may at times involve deliberate choices to use the law but at other times to leave it dormant.’ (Chua & Engel 2019, 337)

Ewick & Silbey (1998) have also identified three dominant *types* of legal consciousness. Subjects can be ‘Before the law’, impressed by its majesty and convinced by its legitimacy, ‘With the Law’, utilizing it instrumentally and generally understanding law as a game, and ‘Against the Law’, cynical about its legitimacy and distrustful of its implementation.

The conceptual and methodological approach of this project is strongly influenced by the literature on legal consciousness. However, CITIZENS-LAW will move beyond this literature. Previous research by Hertogh (2004; 2018) has found that most studies are based on an ‘American’ conception of legal consciousness. The primary focus of the ‘American’ conception is: How do people experience (official) law? It allows us to register people’s reactions to a given definition of the law, but it falls short in analysing people’s own normative ideas and expectations. CITIZENS-LAW addresses this shortfall as it will also ask: What do people experience as law? This ‘European’ conception of legal consciousness focuses on people’s own ideas of law, that is, it is rooted in the intellectual legacy of Eugen Ehrlich turning to the study of ‘living law’ (2017, for an in-depth discussion see Hertogh 2008).

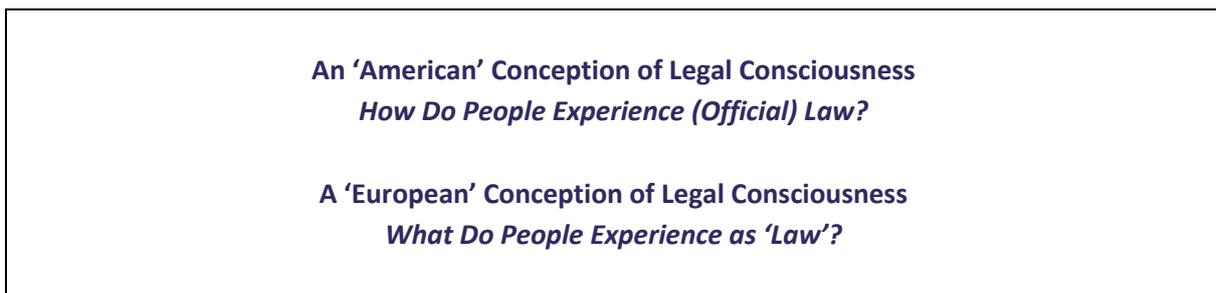
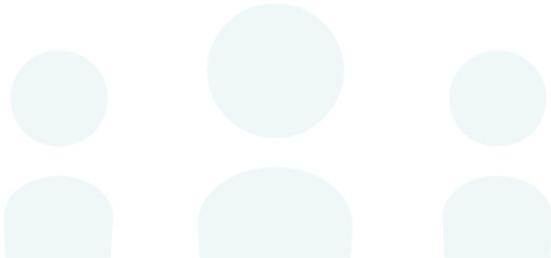


FIGURE 1: Two approaches to legal consciousness (from Hertogh 2004, 475)

CITIZENS-LAW will also study the social foundations of the rule of law through the analytical lens of ‘relational legal consciousness’ (Young 2014; Chua & Engel 2019; Abrego 2019). Rather than analyzing legal consciousness individualistically, a growing number of studies conceptualize legal consciousness as ‘a fully collaborative phenomenon’ (Chua & Engel 2019, 347). These studies show how people’s thoughts and actions ‘inevitably reflect their interactions with other individuals, groups and institutions’ (Chua & Engel 2019, 344). A good example of the relational approach is Young’s (2014) study of rural cockfighters in Hawaii. In response to the critique that previous research ‘centers more on identifying states of legal consciousness than on examining underlying processes’ (Young 2014, 500), she has developed a more dynamic account of legal consciousness. Central to her approach is the idea that ‘[a] person’s beliefs about, and attitude toward, a particular law or set of laws is influenced not only by his own experience, but by his understanding of others’ experiences with, and beliefs about, the law’ (Young 2014, 500; *emph added*).



5. Sub-Theme: Legal Alienation

Previous studies about the role of law in everyday life in Europe (and in Central Europe in particular see Sajó 1986, 1988 and Fekete and Róbert 2018) have signaled an important trend of ‘legal nihilism’, ‘legal cynism’, or ‘legal resentment’ (see, e.g., Kurkchian 2003; Blokker 2016, 2). These studies suggest that there is a growing gap between wider society and the legal system.

As a sub-theme of the research project, CITIZENS-LAW will also use the concept of ‘legal alienation’ (Hertogh 2018) as one way to study the gap between wider society and the legal system.

Over the years, several authors have used this concept to study public attitudes about law in different contexts. For example, Gibson & Caldeira (1996) referred to ‘legal alienation’ as one of the indicators to analyze the legal cultures of Europe. Likewise, Genn (1999, 247), in her study on the legal experiences of ordinary citizens in England and Wales, concluded that ‘[r]espondents’ views of the legal system often conveyed a sense of *alienation* from the institutions and processes of the law....’

The concept of ‘alienation’ has a long and controversial history (see, e.g., Feuerlicht 1978; Geyer 1996). The concept can be traced back to two sources: the theory of alienation established by Karl Marx and the theory of anomie developed in twentieth century sociology from Emile Durkheim’s work (see, e.g., Ludz 1976; Tummers 2013, 20-34). Contemporary social science has been largely influenced by Seeman’s (1959) seminal paper *On the Meaning of Alienation*, in which he identified several alternative meanings of (subjective) alienation. The concept was particularly popular during the 1960s and 1970s and has produced a small library of literature in many different fields, including sociology, philosophy, social psychology, and political science (for a review of the literature, see Seeman 1975; 1991). One bibliography on alienation refers to over 7,000 different titles, including nearly 5,000 articles, more than 1,000 books, and some 750 dissertations (Van Reden 1980).

Considering this voluminous body of literature, it seems as if there is almost no aspect of contemporary life which has not been discussed in terms of ‘alienation’. There are, however, surprisingly few studies in which the concept of alienation has been (explicitly) linked to issues of law and society. Whereas the general alienation literature could easily fill a small library, there are still only a handful of studies available on ‘legal alienation’. As indicated before, Gibson and Caldeira (1996) refer to ‘legal alienation’ as one of the indicators in their quantitative study of the legal cultures of Europe. Sampson and Jeglum Bartusch (1998) have used a similar approach to study racial differences in the level of ‘legal cynicism’, dissatisfaction with the police, and the tolerance of various forms of deviance in different

Chicago neighborhoods. Moreover, both Rattner and Yagil (2004) and Shamir (2013) have included the concept of 'legal alienation' in their study of attitudes towards the rule of law among different groups of Israeli citizens. In a more theoretical discussion, Teubner (2001) focuses on 'law's estrangement from its social and human origins.' Also, Gargarella (2009; 2011) has briefly discussed the idea of 'legal alienation' to analyze the role of criminal law in situations of social injustice. Finally, in the field of legal theory, Green (2008) and Wilkinson (2010) refer to 'alienation' in their discussion of HLA Hart's concept of law (Hart 2012, 79-122). These studies have made a considerable contribution to the introduction of the 'alienation' concept in law and society research. In most of these studies, however, 'legal alienation' is only mentioned very briefly without any serious attempt to operationalize the concept.

Most studies on alienation use this term to describe a state of 'separation' (Kalekin-Fishman & Langman 2015, 917) or 'disconnection' (Tummers 2013, 45); from work, from politics or from society. This general insight may also be applied to the field of law. For example, one study describes legal alienation as the 'psychological distance between the self and the legal system' (Siu-Kai & Hsin-Chi 1988, 123). In the German literature, some authors use the term *Rechtsferne* to indicate 'the "distance" between laypeople and law' (Kölbel 2005, 249). Friedman (1975) distinguishes between 'internal' legal culture (related to judges, legislators, lawyers and others who perform specialized legal tasks, in sum, all who have a professional relationship to the law) and 'external' legal culture (of the general public).

In CITIZENS-LAW, 'legal alienation' will refer to the perceived distance between 'internal' and 'external' understandings of law. Legal alienation can be defined as a cognitive state of psychological disconnection from official state law and the justice system.

When people are listening to the discourse of the law, they are no longer able to identify their voice at all. Instead, they hear a foreign, distant and incomprehensible voice (Gargarella 2011, 24). We can now break down this preliminary idea of 'legal alienation' further by applying Seeman's (1959) four dimensions of (subjective) alienation to the field of law and society. Following his typology, we may distinguish four potential types of 'legal alienation':

- a. The first type of legal alienation is *legal meaninglessness*; the sensed inability to understand the law and to predict the outcome of legal processes. Perhaps the most famous illustration of this is the story of the fictional character Jozef K. in Franz Kafka's novel *The Trial*, who gradually becomes completely entangled in a web of unpredictable legal procedures (Kafka 2005, for a discussion see Ziolkowski 1967). Genn, in her study of the legal experiences of ordinary people in England and Wales, has recorded similar examples of alienation. According to Genn (1999, 247), '[t]here is a lack of sympathy with the jargon of the law [and] the mystifying procedures of the courts...' (Genn 1999, 247).

Moreover, '[m]any practices, which are central to preparation for appearance in court and the settlement of proceedings, appear alien and sometimes inappropriate to those who had no relevant experience.'(Genn 1999, 224) Or, as one of the respondents explained about his day in court: 'It was a bit of mystery to me. I mean it was just like going into sort of a puzzle and coming out.'(Genn 1999, 223)

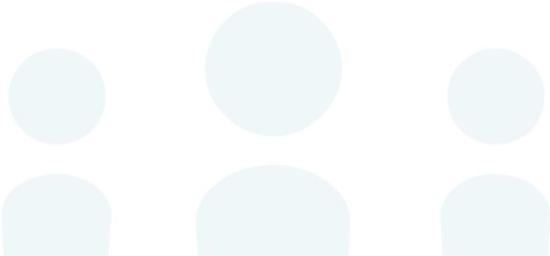
- b. The second type of legal alienation may be characterized as *legal powerlessness*. Whereas the previous type of legal alienation refers to the sensed ability to *predict* outcomes, this second meaning essentially refers to the sensed ability to *control* the outcome of legal processes (see Seeman 1959, 786). In Seeman's (1959, 784) terms, this idea of alienation can be defined as the expectancy held by the individual that his own behavior cannot determine the occurrence of the outcome of legal processes. This is also reflected in Gibson and Caldeira's study (1996, 65/Table 1), when they ask their respondents to react to these two propositions: 'It is rare that law is on my side; usually, I find laws to be restrictive and against my interests.' And: 'My interests are rarely represented in the law; usually law reflects the views of those who want to control me.'
- c. The third type of legal alienation is what Sampson and Jeglum Bartusch (1998) and others refer to as, *legal cynicism* (see, e.g., Carr et. al 2007; Gau 2015; Bell 2016). This 'anomie about law' refers to 'a state of normlessness in which the rules of the dominant society (and hence the legal system) are no longer binding in a community or for a population subgroup' (Sampson and Jeglum Bartusch 1998, 782). There is, in other words, an expectancy that the law doesn't matter anymore. In their study, this type of alienation is measured by a scale with five items assessing general beliefs about the legitimacy of law and social norms. Respondents reported their level of agreement with statements such as 'Laws were made to be broken' and 'It's okay to do anything you want as long as you don't hurt anyone'. 'The common idea is the sense in which laws or rules are not considered binding in the existential, present lives of respondents' (Sampson and Jeglum Bartusch 1998, 786).
- d. The final type of legal alienation is *legal value-isolation*. The alienated in this sense are those who assign low reward value to those legal goals or beliefs that are typically highly valued in a given society. There is, in other words, a perceived gap between the values of the law and one's personal values. Anderson (1999, 9), in his ethnographic study of the inner-city ghetto areas of Philadelphia argues, for example, that 'alienation from broader society's institutions, notably that of criminal justice, is widespread.' Moreover, the rules of civil law have been weakened and replaced by a 'code of the street'.

These four types of legal alienation can be seen as different positions on a spectrum which represents a widening gap between internal and external understandings of law (see Figure 3.1). In this way, they represent different degrees of alienation. The perceived distance to

the law and the justice system gradually increases, from situations of ‘legal meaningfulness’ at one end to feelings of ‘legal powerlessness’ and ‘legal cynicism’ and – ultimately – situations of ‘legal value-isolation’ at the other end.

Legal meaningfulness	Legal powerlessness	Legal cynicism	Legal value-isolation
Sensed inability to understand the law and to predict the outcome of legal processes.	Sensed inability to control the outcome of legal processes; and the feeling that the law is restrictive.	Feeling that the rules of the justice system are, or should be, no longer binding.	Perceived gap between the values of the law and one’s personal values.

FIGURE 2: Spectrum of legal alienation (from Hertogh 2018, 57).



6. Normative Profiles

In general terms, most studies on legal alienation focus on two basic questions. First: ‘Are people aware of the law?’ How much do they know about the legal system in general, about the official rules and regulations, or about a particular court case? Second: ‘Do people identify with law?’ To what extent does the law reflect their own personal values, their own sense of right or wrong, and their own idea of justice? To consider these issues more systematically, CITIZENS-LAW will apply both questions to a simple two by two matrix (Hertogh 2018). The first question, which we will refer to as the ‘cognitive’ dimension of legal alienation, has been put on the horizontal axis. The second question, which reflects the ‘normative’ dimension, is placed on the vertical axis. Each field then corresponds with a different ‘normative profile’ (Figure 3).

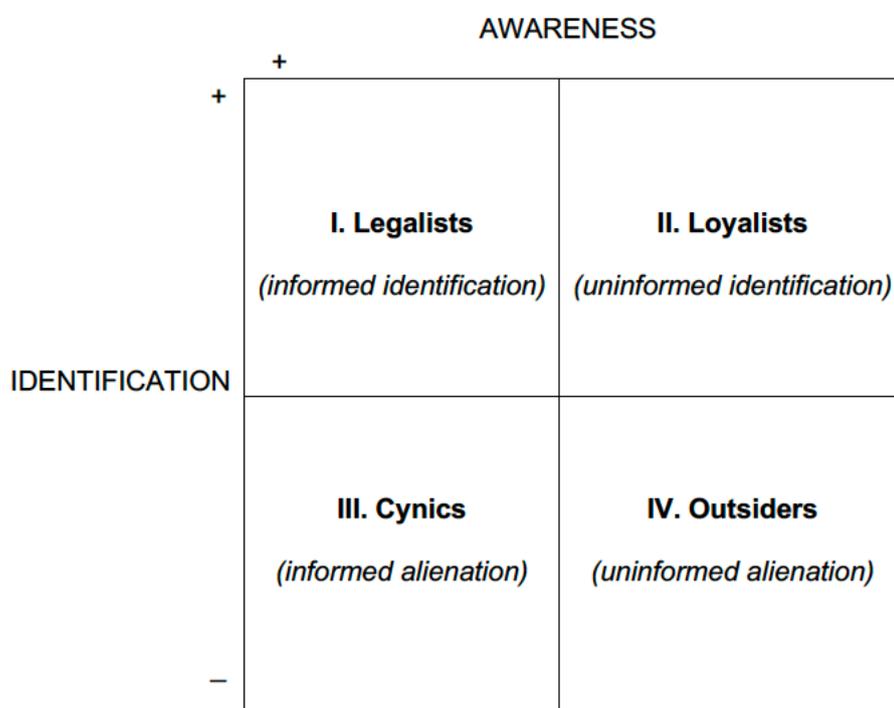


FIGURE 3: Four normative profiles (from Hertogh 2018, 58).

I. Legalists

The first normative profile is that of ‘legalists’. Here people are well aware of official law. Also, people generally identify with law. This profile reflects the model of the *homo juridicus*, the legal equivalent of the *homo oeconomicus* (Teubner and Hutter 2000), and is often found in publications on legal doctrine.

We know from decades of law and society research, however, that this model is not an accurate description of reality. First, many Knowledge and Opinion about Law (KOL) studies have demonstrated time and again that people are generally not well aware of legal rules

(Podgorecki et al. 1973). Second, not all people equally identify with law. For example in the United States, general attitudes toward law, legal institutions, and legal actors (particularly in relation to the regulation of offensive public speech) vary according to race and gender (Nielsen 2000).

Both the fact that a high level of legal awareness and a high level of legal identification are not self-evident suggests that, besides 'legalists', there are at least three alternative normative profiles.

II. Loyalists

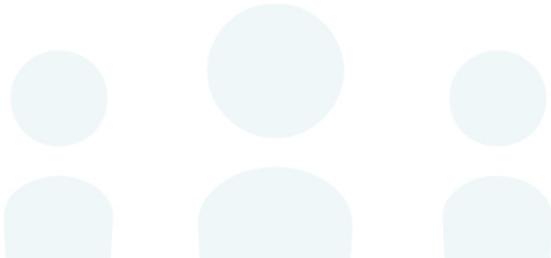
The second normative profile is the profile of the 'loyalist'. Here, people generally identify with the law. Contrary to the previous profile, however, people's awareness of the law is limited. They have a general idea of what the law is and they trust that it will be all right. They feel that the legal system should be respected and that it generally serves them well.

Elements of this normative profile are also reported in Genn's study in England and Wales. Generally speaking, this study revealed 'a depth of ignorance about the legal system and a widespread inability to distinguish between criminal and civil courts' (Genn 1999, 247). Nevertheless, a large majority of the respondents in this study also expressed their confidence in the legal system. Of all respondents, 73% (strongly) agreed with the statement that 'courts are an important way for ordinary people to enforce their rights' (Genn 1999, 227) and 53% agreed that they would get a fair hearing if they went to court (Genn 1999, 230).

III. Cynics

In the third normative profile, and similar to the first profile, people are generally well aware of the law. The most important difference with the first profile is, however, that the degree in which people identify with law is much lower. They are aware of the law, yet this also makes them critical about law. This profile can be described as that of 'cynics'. They generally do not feel that those norms and values which they themselves consider important are sufficiently reflected in the law.

In recent years, there have been a number of protests in the Netherlands against (alleged) miscarriages of justice (Hertogh 2011). In some of these cases (like the murder trial against the nurse 'Lucia de B.') the protesters included journalists, university professors, novelists and other intellectuals who were generally very well informed about the ins and outs of the criminal justice system and the details of the case. Most of these protesters can be characterized as 'cynics'.



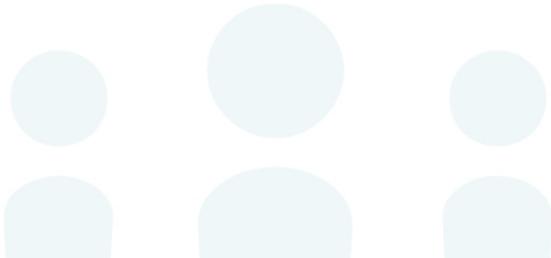
IV. Outsiders

The fourth, and final, category in Figure 1 are 'outsiders'. In this normative profile, people's awareness of the law is limited. People do not identify with the law either. This is the mirror image of the first profile. While 'legalists' regularly turn to law, the 'outsiders' have turned their backs to law. This profile is, for instance, reflected in Anderson's (1999) study of life in the inner-city ghetto areas of Philadelphia.

Sliding Scale

Figure 3 can also be read as a sliding scale from 'legal identification' to 'legal alienation'. Moreover, each profile is likely to correspond with one or more (overlapping) types of legal alienation. At one end of the continuum are the 'legalists'. Here there is no sign of legal alienation whatsoever. This profile is followed by 'loyalists'. This normative profile points towards 'uninformed identification' with the law; a first, weak sign of legal alienation (sometimes associated with feelings of 'legal meaninglessness'). With 'cynics', the level of alienation slowly increases (with clear signs of 'legal meaninglessness', 'legal powerlessness' or 'legal cynicism'). And at the other end of the continuum are 'outsiders' (with strong feelings of 'legal powerlessness', 'legal cynicism' and 'legal value isolation').

Like any model, the analytical framework in Figure 3 is a simplification of reality. First, it should be noted that 'legalists', 'loyalists', 'cynics' and 'outsiders' do not refer to different *persons* but to different *profiles*. This normative profile is 'not a permanent or essential aspect of person's identity or life, although it may end up being empirically stable.' (Ewick & Silbey 1998, 50) These normative profiles are 'types of more or less enduring response, not types of personality organization.' (Merton 1957, 140) Second, in explaining the different normative profiles, we referred to 'the law' in general. However, different fields of law may be associated with different perceptions and understandings. For example, someone's normative profile in relation to criminal law may be very different to the way in which he or she relates to civil law, copyright law, or European law. Consequently, these four normative profiles are 'neither fixed nor necessarily consistent; rather, [they are] plural and variable across contexts [and across different areas of law]' (Ewick & Silbey 1998, 50).



7. Underlying Mechanisms

To analyse the underlying mechanisms that explain people's positive or negative perceptions of law (and possibly their degree of legal alienation), CITIZENS-LAW will build on insights from previous studies. Earlier research has identified four elements that are crucial for people's perceptions of law. These elements are: substantive justice, procedural justice, punitiveness, and responsiveness.

a. The perceived level of *substantive justice* of the law and the justice system: Do people feel that the law meets their justice-expectations?

In the early 1990s, the Berlin artist and former dissident Bärbel Bohley expressed the feeling of many East Germans when she exclaimed: 'We wanted justice, but what we got was the Rechtsstaat' (Von Munch 1994; Löw 2001). Several years after the fall of the Berlin Wall in 1989, many people were deeply disappointed in the West German legal system. In their view, the rigid and formal German laws did not meet their justice expectations. In 2013, George Zimmerman, a neighborhood watch volunteer in Florida who shot dead Trayvon Martin, an unarmed Black teenager, was acquitted. After a three-week trial, the jury agreed that Zimmerman shot Martin in self-defense. This verdict immediately prompted a huge public outcry and ignited a national debate about race and justice in the United States. Outside the courthouse, the acquittal was greeted with angry shouts by protesters who were pumping their fists in the air, waving placards and chanting 'No Justice, No Peace!'. The next day, some 2,000 protesters gathered on Times Square in New York City demanding 'Justice for Trayvon' and there were similar protest marches in other major cities, including San Francisco, Chicago and Washington DC (Hertogh 2014).

Both examples illustrate how people's positive and negative perceptions of law and the legal system (and their perceptions of the rule of law) are closely connected to their justice-expectations. In European legal thinking since Antiquity, the idea of law has always been coupled to the notion of justice (see Kelsen 1960). Over the centuries, there have been various theories on the relationship between law and justice. These ideas are also represented by 20th century natural law thinkers (see Radbruch 2006, Finnis 2011, 161–196). For example, Radbruch (2006, 7) argued that 'Where there is not even an attempt at justice (...) then the statute is not merely 'flawed law', it lacks completely the very nature of law'. In addition to these theoretical insights, it has also been argued from a behaviourist point that ' "justice" considerations are built in to the very enterprise of affecting human behaviour through law' (D'Amato 1992-1993, 581). This suggests that people's perceptions of law cannot completely be disconnected from their position if a legal provision or decision is just or unjust in their eyes. Consequently, people's compliance with the law may be influenced by popular justice expectations. This idea is

also reflected in Gibson & Caldeira's (1996, 65) study on European legal culture, when they asked their respondents if they agreed with the following statement: 'It is not necessary to obey a law you consider unjust.' For Gibson and Caldeira, this item was one of three items in total to analyze people's perceptions of 'the rule of law'. Based on these and other survey items, they concluded that 'there is a considerable cross-national variation within the EU in attitudes toward the rule of law' (Gibson and Caldeira 1996, 66).

b. The perceived level of *procedural justice* of the law and justice system: Do people feel that legal procedures treat them fairly?

There is also an extensive body of literature that shows that the public's willingness to cooperate and comply with legal authorities is strongly influenced by their subjective judgments about the fairness of the procedures through which the police or the courts exercise their authority. (Tyler 1990; Tyler and Huo 2002) 'In particular, people's reactions to legal authorities are based on a striking degree of their assessments of the fairness of the processes by which legal authorities make decisions and treat members of the public.' (Tyler 2003, 284) Drawing on empirical studies in which people are interviewed about 'their attitudes, values and behaviours toward law and legal authorities', this body of literature shows that these subjective judgments are 'central to the effectiveness of legal authorities' (Tyler 2003, 285) There is a wide variety of issues that influence the degree in which people evaluate a procedure's fairness (Lind and Tyler 1988) and the importance of procedural justice varies depending upon the situation. However, research consistently points to several elements as key: *voice*, *neutrality*, *respect* and *trust*. *Voice* refers to the fact that 'people want to have the opportunity to tell their side of the story in their own words' (Tyler 2007, 30). *Neutrality* indicates that people want to view judges, police officers and other public officials as 'neutral, principled decision makers who make decisions based upon rules and not personal opinions.' (Tyler 2007, 30) *Respect* emphasizes that 'people want to feel that when they have concerns and problems both they and their problems will be taken seriously by the justice system' (Tyler 2007, 30). *Trust* refers to people's assessment of the character of the judge, the police-officer or other public official. 'The key elements in this evaluation involve issues of sincerity and caring' (Tyler 2007, 31).

c. The perceived level of *punitiveness* of the law and the justice system: Do people feel that the legal system provides the right punishment?

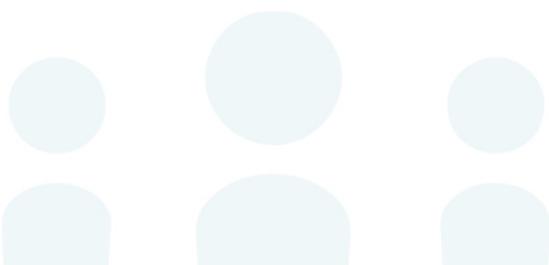
Moreover, people's perceptions of law are related to their evaluation of the punitiveness of the justice system (see, e.g., Pratt et al. 2005). In the literature, the term punitiveness often carries connotations of excess (as in the phrase 'the punitive turn'). That is, 'the pursuit of punishment over and above that is necessary or appropriate.' (Matthews 2005,

179) However, in CITIZENS-LAW we will use the term in a more neutral sense and it will refer to the (perceived) severity and sanctions of the (criminal) justice system. Several European studies point to a ‘punitiveness-deficit’: a gap between what the general public sees as the ‘right’ punishment and the actual level of punishment provided by the justice system. For example, in the Netherlands research shows that, over a longer period of time, a large majority between 70 and 85% of the population feel that crimes are being punished too lightly (Noyon 2021, 97). According to a major national survey in 2010, 78% felt that judges were too lenient. In 2016, this was true for 71% and 2019 for 68% (SCP 2020, 117). In 2019, there were more older respondents (72%) than younger respondents (59%) who felt that judges were too lenient. Also, among those respondents with a lower education there were more people (78%) who felt that judges were too lenient than among respondents with the medium-level (72%) or a high-level education (55%) (SCP 2020, 117). Experimental studies suggest that this ‘punitiveness deficit’ does not completely disappear after representatives from the general public are provided with the same detailed and realistic dossiers as judges (De Keijser & Elffers 2009).

d. The perceived level of *responsiveness* of the law and the justice system: Do people feel that the law responds adequately to the needs and concerns of society? (e.g. Nonet & Selznick, 1978)

A fourth mechanism that shapes people’s perceptions of law is the degree in which people feel that the law and the justice system is in touch with society and responds adequately to (what they consider) the most important needs and concerns of its citizens. For example, some researchers in the Netherlands point to a ‘responsiveness-deficit’. This refers to the fact that some people feel that courts are not interested in their point of view and judges are out of touch with society. For example, there is a considerable majority for critical statements like these: ‘Judges do not try hard enough to explain their decisions to the common man’ (82%), ‘Judges decide too often in a way unacceptable to the ordinary citizen’ (61%), and ‘The Dutch judge lives in an ivory tower’ (48%) (Elffers & De Keijser 2008, 457). To some extent, this perceived lack of responsiveness is also reflected in survey data about lay participation in the criminal justice system (see Klijn & Croes 2007). Unlike most other countries, the Netherlands does not practice trial by jury and does not employ lay judges. Yet nearly 4 out of 10 people (37%) are (wholly or partially) in favor of some form of lay participation in criminal cases (39% is against). In general terms, 71% of the respondents are in favor of an informative kind of lay participation (and only 6% rejected these modes of participation). Asked for their motivations, most people mentioned a ‘greater degree of public involvement’, followed by the consideration that ‘court judgments would become more understandable’ and the idea that ‘judges will be better informed (about what goes on in society).’ (Klijn & Croes 2007, 164)

Thus far, these four aspects have been mostly studied by scholars from different academic disciplines (jurisprudence, social psychology, criminology, legal theory) and there has been only limited cross-fertilisation between these three types of literature. CITIZENS-LAW will combine these separate bodies of research into one integrated research design to increase our theoretical understanding of the social foundations of the rule of law.



8. Analytical Framework

Figure 4 summarizes the analytical framework of the CITIZENS-LAW project. First, the framework marks the distinction between the legal and the social foundations of the rule of law. Next, it describes the two main approaches that will be used to analyse people’s everyday perceptions of law: legal consciousness and legal alienation. Finally, the framework points to four mechanisms that are crucial for people’s positive or negative perceptions of law: substantive justice, procedural justice, punitiveness and responsiveness.

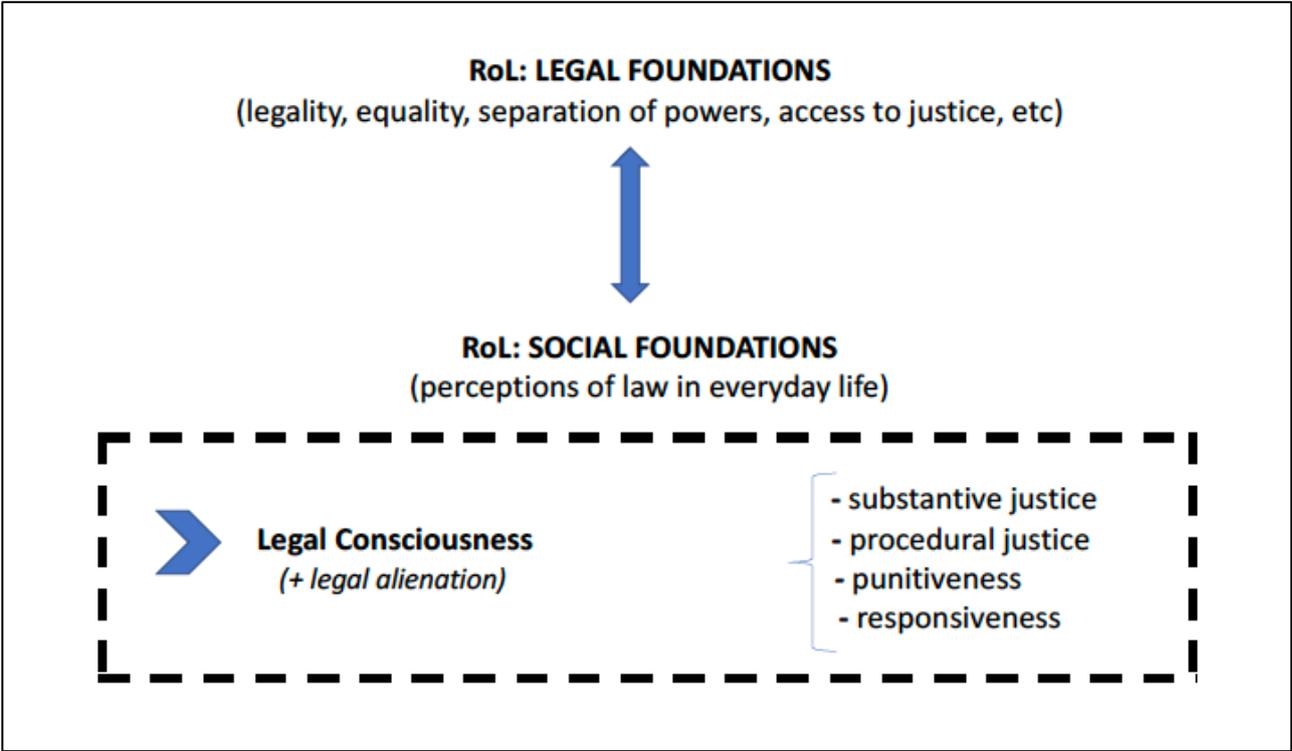
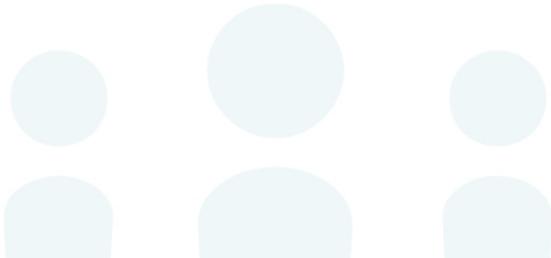
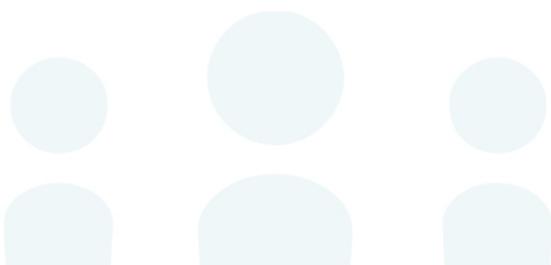


FIGURE 4: Analytical framework



9. To Be Continued...

This analytical framework will be the conceptual backbone of the CITIZENS-LAW project. However, as indicated before, it should also be stressed that this framework is still a work in progress and will be developed further as the project develops. We will also use this analytical framework to guide the research design of our empirical study of the social foundations of the rule of law in The Netherlands, Denmark and Hungary. The methodology of this project is discussed in a separate paper (Working Paper 2: Methods).



REFERENCES

Abrego, L. (2011) 'Legal Consciousness of Undocumented Latinos: Fear and Stigma as Barriers to Claims-Making for First-and 1.5 Generation Immigrants,' *Law & Society Review*, 45(2), pp. 337-370.

Abrego, L. J. (2019). Relational Legal Consciousness of US Citizenship: Privilege, Responsibility, Guilt, and Love in Latino Mixed-Status Families. *Law & Society Review*, 53(3), 641-70.

Albiston, C. (2006). Legal Consciousness and Workplace Rights. In: B. Fleury-Steiner & L. Nielsen (Eds), *The New Civil Rights Research: A Constitutive Approach*. Aldershot: Ashgate, 55-75.

Anderson, E. (1999) *Code of the Street: Democracy, Violence, and the Moral Life of the Inner City*. New York: Norton.

Batory, A. (2016). 'Defying the Commission: Creative Compliance and Respect for the Rule of Law in the EU,' *Public Administration*, 94(3), 685-699.

Bell, M. (2016) 'Situational Trust: How Disadvantaged Mothers Reconceive Legal Cynicism,' *Law & Society Review*, 50(2), pp. 314-347.

Blokker, P. (2016). EU Democratic Oversight and Domestic Deviation from the Rule of Law: Sociological Reflections. In: C. Closa & D. Kochenov, (Eds). *Reinforcing Rule of Law Oversight in the European Union*. Cambridge: Cambridge University Press, 249-269.

Breig, B. et al. (Eds) (2018). Die Krise der Rechtsstaatlichkeit (special issue), *OER Osteuropa Recht*, 64(4), 475-646.

Brooks, R.E. (2003). The New Imperialism: Violence, Norms, and the "Rule of Law". *Michigan Law Review*, 101(7), 2275-2340.

Carothers, T. (2006). The Rule-of-Law Revival. In: T. Carothers (Ed.). *Promoting the Rule of Law Abroad: In Search of Knowledge*. Washington, D.C.: Carnegie Endowment for International Peace.

Carr, P. et al. (2007) 'We Never Call the Cops And Here Is Why: A Qualitative Examination of Legal Cynicism in Three Philadelphia Neighborhoods,' *Criminology*, 45(2), pp. 445-479.

Chua, L. and Engel, D. (2019). Legal Consciousness Reconsidered. *Annual Review of Law and Social Science*, 15, 335- 353.

Cover, R. (1982). Introduction: Nomos and Narrative. *Harvard Law Review*, 97, 4–68.

Cowan, D. (2004). Legal Consciousness: Some Observations. *The Modern Law Review*, 67(6), 928-958.

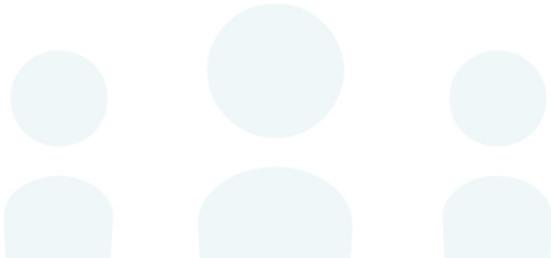
D'Amato, A. (1992-1993). 'On the Connection Between Law and Justice'. *U. C. Davis Law Review* 26, 572–582.

De Keijser, J & Elffers, H. (2009) 'Cross-Jurisdictional Differences in Punitive Public Attitudes?' *European Journal on Criminal Policy and Research*, 15(1-2), pp. 47-62.

European Commission (2014). *A New EU Framework to Strengthen the Rule of Law*, Strasbourg, 11 March 2014, COM (104) 158 final.

Ehrlich, E. (2017). *Fundamental Principles of the Sociology of Law*. Abingdon, Oxon: Routledge.

Elffers, H. & De Keijser, J. (2008) 'Different Perspectives, Different gaps. Does the General Public Demand a More Responsive Judge?' in: Kury, H. (ed) *Fear of Crime–Punitivity. New Developments in Theory and Research*. Bochum: Universitätsverlag Brockmeyer, pp. 447-470.



European Commission (2019). *Strengthening the Rule of Law within the Union: A Blueprint for Action*. Brussels, 17 July 2019, COM (2019) 343 final.

European Parliament (2020). Rule of Law in Poland and Hungary has Worsened (Press Release, 16-01-2020). <https://www.europarl.europa.eu/news/en/press-room/20200109IPR69907/rule-of-law-in-poland-and-hungary-has-worsened>

Ewick, P. and Silbey, S. (1998). *The Common Place of Law: Stories from Everyday Life*. Chicago: University of Chicago Press.

Fekete B. and Róbert P. (2018). 'Understanding Hungarian Attitudes Toward Law in an International Context' *SSRN*, 11-18. Available at SSRN : <https://ssrn.com/abstract=3120933>.

Feuerlicht, I. (1978) *Alienation: From the Past to the Future*. Wesport: Greenwood Press.

Finnis, J. (2011). *Natural Law and Natural Rights*. Oxford: Oxford University Press.

Fleury-Steiner, B. (2003) 'Before or Against the Law? Citizens' Legal Beliefs and Experiences as Death Penalty Jurors,' *Studies in Law, Politics and Society*, 27, pp. 115-136.

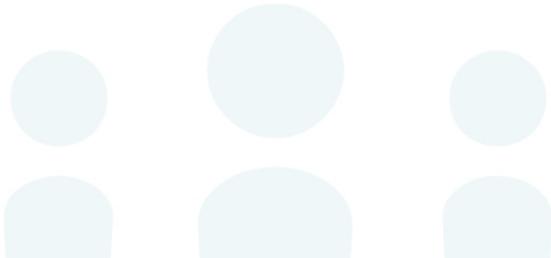
Fleury-Steiner, B. (2004) *Jurors' Stories of Death*. Ann Arbor: University of Michigan Press.

Friedman, L. (1975) *The Legal System: A Social Science Perspective*. New York: Russell Sage Foundation.

Fortin, K. (2021). Of Interactionality and Legal Universes: A Bottom-Up Approach to the Rule of Law in Armed Group Territory. *Utrecht Law Review*, 17(2).

Fritsvold, E. (2009). Under the Law: Legal Consciousness and Radical Environmental Activism. *Law & Social Inquiry*, 34(4), 799-824.

Fuller, L. (1949). 'The Case of Speluncean Explorers' *Harvard Law Review* 62 (4), 611–645.



Gargarella, R. (2009) 'Tough on Punishment: Criminal Justice, Deliberation, and Legal Alienation,' in: Besson, S & Martí, J.L. (eds) *Legal Republicanism: National and International Perspectives*. Oxford: Oxford University Press, pp. 167-184.

Gargarella, R. (2011) 'Penal Coercion in Contexts of Social Injustice,' *Criminal Law and Philosophy*, 5(1), pp. 21-38.

Gau, J. (2015) 'Procedural Justice, Police Legitimacy, and Legal Cynicism: A Test for Mediation Effects,' *Police Practice and Research*, 16(5), pp. 402-415.

Genn, H. (1999) *Paths to Justice: What People Do and Think About Going to Law*. Oxford/Portland Oregon: Hart Publishing.

Geyer, F. (1996) *Alienation Theories: A General Systems Approach*. Oxford: Pergamon Press.

Gibson, J. and Caldeira, G. (1996). The Legal Cultures of Europe. *Law and Society Review*, 30(1), 55-85.

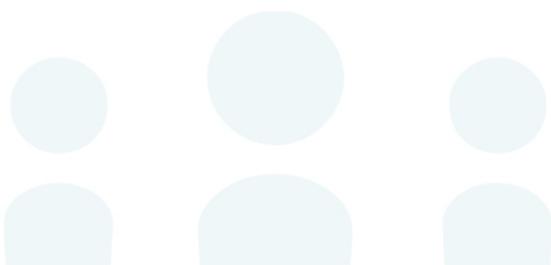
Green, L. (2008) 'Positivism and the Inseparability of Law and Morals,' *New York University Law Review*, 83, pp. 1035-1058.

Halliday, S. (2019). After Hegemony: The Varieties of Legal Consciousness Research. *Social & Legal Studies* 28(6), 859-878.

Hart, H. L. A. (2012). *The Concept of Law*. Oxford: Oxford University Press.

Hertogh, M. (2004). A 'European' Conception of Legal Consciousness: Rediscovering Eugen Ehrlich. *Journal of Law and Society*, 31(4), 457-481.

Hertogh, M. eds. (2008). *Living Law. Reconsidering Eugen Ehrlich*. Oxford: Hart.



Hertogh, M. (2011) 'Loyalists, Cynics and Outsiders. Who Are the Critics of the Justice System in the UK and the Netherlands?' *International Journal of Law in Context*, 7(1), pp. 31-46.

Hertogh, M. (2014) "'No Justice, No Peace!'" Conceptualizing Legal Alienation in the Aftermath of the Trayvon Martin Case,' in: R. Nobles & D. Schiff (Eds.), *Law, Society and Community: Socio-Legal Essays in Honour of Roger Cotterrell*. Aldershot: Ashgate, pp. 187-206.

Hertogh, M. (2018). *Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life*. London: Palgrave Macmillan.

Hoffman, E. (2003) 'Legal Consciousness and Dispute Resolution: Different Disputing Behavior at Two Similar Taxicab Companies,' *Law & Social Inquiry*, 28(3), pp. 691-718.

Kafka, F. (2005) [1935] *The Trial* (transl. by Richard Stokes). London: Hesperus.

Kalekin-Fishman, D. & Langman, L. (2015) 'Alienation: The Critique That Refuses to Disappear,' *Current Sociology*, 63(6), pp. 916-933.

Kelsen, H. (1960) 'What is Justice?' in: Kelsen, H. *What is Justice? Justice, Law and Politics in the Mirror of Science. Collected Essays*. Berkeley & Los Angeles, University of California Press. 1-24.

Kirkland, A. (2008) 'Think of the Hippopotamus: Rights Consciousness in the Fat Acceptance Movement,' *Law & Society Review*, 42(2), pp. 397-432

Klijn, A. & Croes, M. (2007) 'Public Opinion on Lay Participation in the Criminal Justice System of the Netherlands-Some Tentative Findings from a Panel Survey,' *Utrecht Law Review*, 3(2), pp. 157-168.

Kölbel, R. (2005) 'Understellte Rechtsnähe: Zur Literarischen Fiktion im (Straf-) Rechtsdiskurs,' *Zeitschrift für Rechtssoziologie*, 26(2), pp. 249-268.

Kostiner, I. (2003) 'Evaluating Legality: Toward a Cultural Approach to the Study of Law and Social Change,' *Law & Society Review*, 37(2), pp. 323-368.

Kostiner, I. (2006) "'That's Right": Truth, Justice, and the Legal Consciousness of Educational Activists,' in: Fleury-Steiner, B. & Nielsen, L. (eds) *The New Civil Rights Research: A Constitutive Approach*. Aldershot/Burlington: Ashgate, pp. 17-35.

Kochenov, D. and Bárd, P. (2018) *Rule of Law Crisis in the New Member States of the EU. The Pitfalls of Overemphasizing Enforcement* (RECONNECT Working Paper No. 1).

Koncowicz, T.T. (2016). 'Of Institutions, Democracy, Constitutional Self-defence.' *53 Common Market Law Review* 1753-1792

Kubal, A. (2015). 'Legal Consciousness as a Form of Social Remittance? Studying Return Migrants' Everyday Practices of Legality in Ukraine,' *Migration Studies*, 3(1), pp. 68-88.

Kurkchiyan, M. (2003). 'The Illegitimacy of Law in Post-Soviet Societies,' in D. Galligan & M. Kurkchiyan (Eds). *Law and Informal Practices: The Post-Communist Experience*. Oxford: Oxford University Press.

Krygier, M. (2001). Transitional Questions about the Rule of Law: Why, What, and How? *East Central Europe*, 28(1), 1- 34.

Krygier, M. (2008). The Rule of Law: Legality, Teleology, Sociology. In: G. Palombella & N. Walker (Eds). *Re-locating the Rule of Law*. Oxford: Hart Publishers, 2007-65.

Krygier, M. (2016). The Rule of Law: Pasts, Presents, and Two Possible Futures, *Annual Review of Law and Social Science*, 12, 199-229.

Lageson, S. (2017) 'Crime Data, the Internet, and Free Speech: An Evolving Legal Consciousness,' *Law & Society Review*, 51(1), pp. 8-41.

Larson, E. (2004) 'Institutionalizing Legal Consciousness: Regulation and the Embedding of Market Participants in the Security Industry in Ghana and Fiji,' *Law & Society Review*, 38(4), pp. 737-767.

Lind, E. A., & Tyler, T. R. (1988). *The social psychology of procedural justice*. Springer Science & Business Media.

Löw, K. (1991) "'Gerechtigkeit haben wir erwartet, den Rechtsstaat bekommen'" (Bärbel Bohley), in: Löw, K. (ed.), *Zehn Jahre deutsche Einheit*. Berlin: Duncker & Humblot, pp. 25-38.

Loughlin, M. (2010). *Foundations of Public Law*. Oxford: Oxford University Press, 2010.

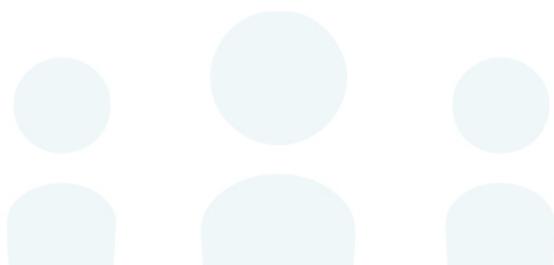
Ludz, P. (1976) 'Alienation as a Concept in the Social Sciences,' in: Geyer, R. & Schweitzer, D. (eds), *Theories of Alienation: Critical Perspectives in Philosophy and the Social Sciences*. Leiden: Martinus Nijhoff Social Sciences Division, pp. 3-37.

Magen, A and Pech, L. (2019) The Rule of Law and the European Union. In: C. May and A. Winchester (Eds.), *Handbook on the Rule of Law*. Cheltenham: Edward Elgar, 235-256.

Marshall, A. (2003) 'Injustice Frames, Legality, and the Everyday Construction of Sexual Harassment,' *Law & Social Inquiry*, 28(3), pp. 659-689.

Marshall, A. (2005) 'Idle Rights: Employees' Rights Consciousness and the Construction of Sexual Harassment Policies,' *Law & Society Review*, 39(1), pp. 83-124.

Marshall, A. (2006) 'Consciousness in Context: Employees' Views of Sexual Harassment Grievance Procedures, in: Fleury-Steiner, B. & Nielsen, L. (eds) *The New Civil Rights Research: A Constitutive Approach*. Aldershot/Burlington: Ashgate, pp. 101-116.



Matczak, M. (2019). Poland's Rule of Law Crisis: Some Thoughts, *Hague Journal on the Rule of Law*, 11 (2-3), 407-410.

Matthews, R. (2005). The myth of punitiveness. *Theoretical criminology*, 9(2), 175-201.

Merton, R. (1957) *Social Theory and Social Structure*. New York: The Free Press.

Nicolaidis, K., & Kleinfeld, R. (2012). *Rethinking Europes «Rule of Law» and Enlargement Agenda: The Fundamental Dilemma*.

Nielsen, L. (2000). Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment. *Law & Society Review*, 34(4), 1055-1090.

Nielsen, L. (2004) *License to Harass: Law, Hierarchy and Offensive Public Speech*. Princeton: Princeton University Press.

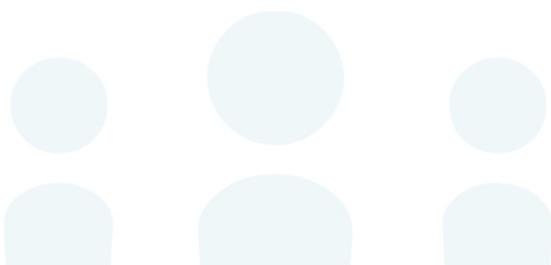
Nonet, P. & Selznick, Ph. (1978). *Law and Society in Transition: Toward Responsive Law*. New York: Harper & Row.

Noyon, L., *Strafrecht en publieke opinie. Een onderzoek naar de relatie tussen de strafrechtspleging en het publiek, met bijzondere aandacht voor het Openbaar Ministerie*, Den Haag: Boom juridisch 2021.

Pech, L. (2020). The Rule of Law in the EU: The Evolution of the Treaty Framework and Rule of Law Toolbox. In: P. Craig, Paul and G. de Búrca (Eds). *The Evolution of EU Law*. Oxford: Oxford University Press, in press.

Pratt, J. et al. (Eds) (2005). *The New Punitiveness: Trends, Theories, Perspectives*. Cullompton: Willan.

Podgórecki, A. et al. (eds) (1973) *Knowledge and Opinion About Law*. London: M. Robertson.



Radbruch, G. (2006). 'Statutory Lawlessness and Supra-Statutory Law (1946)' *Oxford Journal of Legal Studies* 26, 1–11.

Rattner, A. & Yagil, D. (2004) 'Taking the Law into One's Own Hands on Ideological Grounds,' *International Journal of the Sociology of Law*, 32(1), pp. 85-102.

Reding, V. (2013) The EU and the Rule of Law – What Next? Speech, 4 September 2013.

https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_13_677

Sadurski, W. (2019) *Poland's Constitutional Breakdown*. Oxford: Oxford University Press.

Sajó A. (1986). *Látszat és valóság a jogban*. Budapest: KJK.

Sajó A. (1988). *A jogosultság-tudat vizsgálata*. Budapest: MTA JTI.

Sampson, R. J., & Bartusch, D. J. (1998). Legal cynicism and (subcultural?) tolerance of deviance: The neighborhood context of racial differences. *Law and society review*, 777-804.

Scheppele, K.L. (2015). Understanding Hungary's Constitutional Revolution. In: A. von Bogdandy and P. Sonnevend (Eds). *Constitutional Crisis in the European Constitutional Area: Theory, Law and Politics in Hungary and Romania*. Oxford: Hart Publishing, 124-137.

SCP, *De sociale staat van Nederland 2020*, Den Haag: Sociaal en Cultureel Planbureau 2020, <https://digitaal.scp.nl/ssn2020/>

Seeman, M. (1959) 'On The Meaning of Alienation,' *American Sociological Review*, 24(6), pp. 783-791.

Seeman, M. (1975) 'Alienation Studies,' *Annual Review of Sociology*, 1(1), pp. 91-123.

Shamir, J. (2013) 'The Influence of Age on the Attitudes towards the Rule of Law: The Case of Immigrants from the Former Soviet Union to Israel,' *Journal of Law and Social Deviance*, 5(1), pp. 1-100.

Silbey, S. (2001) 'Legal Culture and Consciousness,' In: N.J. Smelser and P.B. Baltes (eds.), *International Encyclopedia of the Social and Behavioral Sciences*. Amsterdam: Elsevier Sci., 8623–29.

Siu-Kai, L., & Hsin-Chi, K. (1988) *The Ethos of the Hong Kong Chinese*. Hong Kong: Chinese UP.

Szente, Z. (2017) Challenging the Basic Values – the Problems with the Rule of Law in Hungary and the EU's Failure to Tackle Them. In: A. Jakab and D. Kochenov (Eds), *The Enforcement of EU Law and Values*. Oxford: Oxford University Press, 456-475.

Teubner, G. (2001) 'Alienating Justice: On the Surplus Value of the Twelfth Camel,' in: Nelken, D. & Pribán, J. (eds) *Law's New Boundaries: Consequences of Legal Autopoiesis*. Aldershot: Ashgate, pp. 21-44.

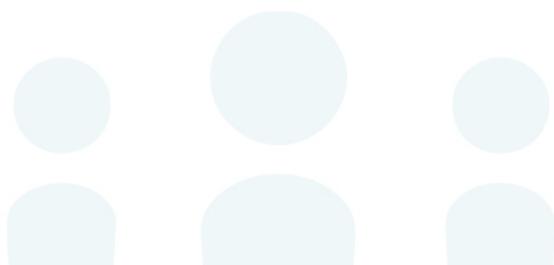
Teubner, G. & Hutter, M. (2000) 'Homo Oeconomicus and Homo Juridicus: Communicative Fictions,' in: Baums, T. et al (eds) *Corporations, Capital Markets and Business in the Law*. Den Haag: Kluwer, pp. 569–584

Tummers, L. (2013) *Policy Alienation and the Power of Professionals: Confronting New Policies*. Cheltenham: Edward Elgar Publishing.

Tyler, T. (1990). *Why People Obey the Law*. New Hav Court review: volume 44, issue 1/2-en: Yale University Press.

Tyler, T. R. (2003). Procedural Justice, Legitimacy, and the Effective Rule of Law. *Crime and justice*, 30, 283-357.

Tyler, T. (ed) (2007) *Legitimacy and Criminal Justice: An International Perspective*. New York: Russel Sage Foundation.



Tyler, T. R. (2007). Procedural Justice and the Courts. *Court Review: The Journal of the American Judges Association*, 44(1-2), 26-31.

Tyler, T. & Huo, Y. (2002) *Trust in the Law: Encouraging Public Cooperation with the Police and Courts*. New York: Russell Sage Foundation.

Van Reden, C. (1980) *Bibliography Alienation* (3rd Edition). Amsterdam: SISWO.

Venice Commission, Rule of Law Checklist

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e)

Verfassungsblog (2020), see: <https://verfassungsblog.de/category/debates/rule-of-law-in-the-eu-lost-and-found-debates/> (and the literature cited therein).

Von Munch, I. (1994) 'Rechtsstaat versus Gerechtigkeit', *Der Staat*, 33(165), pp. 165-184.

Wilkinson, M. (2010) 'Is Law Morally Risky? Alienation, Acceptance and Hart's Concept of Law,' *Oxford Journal of Legal Studies*, 30(3), pp. 441-466.

Young, K. (2014) 'Everyone Knows the Game: Legal Consciousness in the Hawaiian Cockfight,' *Law & Society Review*, 48(3), pp. 499-530.

Ziolkowski, T. (1967). 'Franz Kafka: The Trial' in: Ziolkowski, T. *Dimensions of Modern Novels. German Texts and European Contexts*. Princeton NJ: Princeton University Press. 37–67.

